STATE OF MICHIGAN

IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff – Appellant,

v

RYAN SCOTT FEELEY,

Defendant – Appellee.

Supreme Court
No. 152534

Court of Appeals
No. 325802

Livingston County Circuit Court
No. 14-022259-AR

Fifty-Third District Court
No. 14-1183-FY

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APPELLEE'S SUPPLEMENTAL BRIEF IN OPPOSITION TO APPLICATION FOR LEAVE TO APPEAL

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COUNTER-STATEMENT OF QUESTION PRESENTED

Defendant Feeley shall continue to rely upon the Counter-Statement of the Question Presented included in his previously-filed response to the People's Application for Leave to Appeal.

COUNTER-STATEMENT OF FACTS

Defendant Feeley shall continue to rely upon the discussion of the pertinent facts provided in the Counter-Statement of Facts included in his previously-filed response to the People's Application for Leave to Appeal.

LEGAL ARGUMENTS

I. THE LOWER COURTS HAVE CORRECTLY DETERMINED THAT THE STATUTORY DEFINITION OF "PERSON" IN MCL 750.81d DOES NOT INCLUDE RESERVE POLICE OFFICERS.

The lower courts have correctly determined that the charge of resisting or obstructing a police officer in violation of MCL 750.81d was improperly brought against Defendant Ryan Scott Feeley in this matter because a reserve police officer is not included within the statutorily-defined class of "persons" protected by that provision. The clear statutory language must be applied as written, and reserve officers are conspicuously absent from the list of individuals falling within the defined class. This Court has always been loath to read additional language into a clear statute that our Legislature could have included, but did not. The Legislature did not choose to include reserve officers within the class of "persons" defining the intended scope of MCL 750.81a, and thus, the Court should be unwilling to expand upon the definition that it has provided by judicial decree.

Statutory construction may be employed if the Court should find that the statutory language is ambiguous. But in that event, evaluation of the statutory language by application of the pertinent rules of construction should lead irresistibly to the conclusion that the Legislature did not intend to include reserve officers within the scope of the criminal prohibition embodied in this statute. There may be valid policy reasons for including reserve officers within the class of "persons" to whom § 750.81d should apply, but the decision to include them should be made by the Legislature by the enactment of appropriate amendatory legislation if those reasons are found to be persuasive by that body.

A. THE RELEVANT LANGUAGE WITHIN MCL 750.81d IS PLAIN AND UNAMBIGUOUS, AND THUS, REQUIRES NO JUDICIAL INTERPRETATION.

It has become axiomatic that, "If the language of the statute is unambiguous, the Legislature must have intended the meaning clearly expressed, and the statute must be enforced as written. No further judicial construction is required or permitted." *Sun Valley Foods Co. v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999). These principles are consistent with another well settled rule – that courts will not read additional language into a statute. The reported decisions have often emphasized, in this regard, that the reading in of additional language that the Legislature could have used, but did not, is plainly at odds with the well-established rule of statutory construction that courts "eschew the insertion of words in statutes." Courts will only insert words into a statute in very rare circumstances, when necessary to give intelligible meaning or to avoid absurdity. *Empire Iron Mining Partnership v Orhanen*, 455 Mich 410, 424; 565 NW2d 844 (1997); *MESC v General Motors Corp.*, 32 Mich App 642, 646; 189 NW2d 74 (1971); *Great Lakes v Employment Security Commission*, 6 Mich App 656, 661; 150 NW2d 547 (1967). In light of this long-standing aversion to insertion of additional language, this Court has emphasized that it is unwilling to "rewrite or embellish" statutory language. *Byker v Mannes*, 465 Mich 637, 646-647; 637 NW2d 210 (2002).

The statutory list of "persons" which defines the scope of MCL 750.81d includes police officers of the state or a political subdivision of the state, sheriffs and deputy sheriffs, and other specifically described individuals who have been granted limited authority to perform law enforcement functions. The list also includes specified individuals – firefighters, emergency medical services personnel, and individuals engaged in search and rescue

operations – who do not perform law enforcement functions. Reserve police officers may provide valuable assistance to law enforcement agencies, but as discussed in greater detail below, they typically have not received the training or achieved the certification which confers the authority of a peace officer, and thus, a reserve officer does not stand on the same footing as a properly trained and certified police officer. This being the case, it cannot be safely or reasonably assumed that the statutory reference to a "police officer of this state or a political subdivision of this state" includes reserve officers.

If the statutory definition of "person" is to include reserve officers, that result can only be accomplished by creating a new class of such officers and reading the new language creating that class into the statute. Defendant Feeley respectfully suggests that this Court should decline the Prosecutor's invitation to do so. The Legislature included several classes of persons within the definition limiting the scope of this provision. It did not include reserve officers within that definition, although it could certainly have included them if it had intended to do so. Reserve officers are a class which is conspicuously absent from the list of persons to whom the statute applies, and thus, it would be inappropriate to apply the prohibitions of this statute to the performance of their duties. As the Court of Appeals noted in *People v Underwood*, 278 Mich App 334, 338; 750 NW2d 612 (2008), "provisions not included in a statute by the Legislature should not be included by the courts."

B. STATUTORY CONSTRUCTION DOES NOT SUPPORT THE PROSECUTOR'S SUGGESTION THAT THE STATUTORY REFERENCE TO "A POLICE OFFICER" SHOULD BE BROADLY INTERPRETED TO INCLUDE RESERVE OFFICERS.

MCL 750.81d does not include a definition of "police officer." If the Court should find that the statute is ambiguous for this or any other reason, its intended meaning may be

discovered by application of the pertinent rules of construction. Defendant Feeley contends that this analysis should lead to the conclusion that the Legislature did not intend to include reserve officers within the scope of MCL 750.81d.

The Court of Appeals Opinion in this matter has properly invoked the time-honored rule of *expressio unius est exclusio alterius*, which holds that the express mention in a statute of one thing implies the exclusion of other similar things. *People v Jahner*, 433 Mich 490, 500 n. 3; 446 NW2d 151 (1989); *Stowers v Wolodzko*, 386 Mich 119, 133; 191 NW2d 355 (1971); *People v Malik*, 70 Mich App 133, 136; 245 NW2d 434 (1976). MCL 750.81d(7)(b) specifically lists, by specific occupations, the persons included within the class of persons to whom the statute applies. As previously discussed, the list includes police officers of the state or a political subdivision of the state, sheriffs and deputy sheriffs, and other specifically described individuals, some of whom have been granted limited authority to perform law enforcement functions, and others who have not. That list does not include reserve officers, and thus, application of the rule of *expressio unius est exclusio alterius* should lead the Court to conclude that the Legislature did not intend to include them.

The Prosecutor's assertion that the "including but not limited to" language of MCL 750.81d(7)(b)(i) should be read expansively to include a reserve officer as a "police officer" is without merit, as the illustrative list within that provision[1] includes classes of law enforcement personnel – motor carrier officers and State Police capitol security officers – who have been granted specific statutory authority to perform law enforcement functions that reserve officers

[1] Similar "including but not limited to" language is also included in § 750.81d(7)(b)(vii), with respect to peace officers of a duly authorized police agency of the United States. This provision has no application in this matter, where the reserve officer in question was not affiliated with a federal police agency.

do not possess. That authority, which includes "all powers conferred upon peace officers for the purpose of enforcing the general laws of this state as they pertain to commercial vehicles," including authority to arrest without a warrant, has been granted to motor carrier officers by MCL 28.6d. Capitol security officers have been granted limited arrest powers by MCL 28.6c.

Reserve officers have not been granted statutory authority to exercise the authority of a peace officer, and as discussed in greater detail *infra*, the Commission on Law Enforcement Standards Act ("the MCOLES Act")[2] specifies that a member of a police department having a full-time officer employed after January 1, 1977 is not empowered to exercise all of the authority of a peace officer, and cannot be employed in a position for which the authority of a peace officer is conferred by statute, unless that person has received certification under MCL 28.609a (1) – the certification by MCOLES that the person has met the law enforcement officer minimum standards at the time of his or her employment as a law enforcement officer. MCL 28.609(5).

On page 5 of his application, the Prosecutor has stated that the Attorney General has recognized that reserve officers are considered peace officers, notwithstanding their exemption from the MCOLES minimum standards, citing OAG, 1983-84, No. 6235 (July 18, 1984) as authority for that proposition. The Court should note, however, that the pertinent statutory authority has been substantially altered since the issuance of that Opinion. In the cited Opinion, the Attorney General concluded that reserve officers appointed pursuant to a municipal ordinance could exercise the authority of a peace officer to the extent allowed under

[2] 1965 PA 203, as amended. This Act, originally known as the "Michigan law enforcement officers training act," was renamed the "commission on law enforcement standards act" by 1998 PA 237.

MCL 28.609. At that time, MCL 28.609(2)[3] provided that "a regularly employed person employed on or after January 1, 1971, as a member of a police force having 3 or more full-time officers shall not be empowered to exercise all the authority of a peace officer in this state, nor employed in a position which is granted the authority of a peace officer by statute, unless the person has complied with the minimum employment standards prepared and published by the council pursuant to this section." Today, the statute requires MCOLES certification, subject to limited exceptions not applicable here, and as the cited Opinion acknowledged, the statute as it existed in 1984 included an exception which provided an exemption from the Act's instructional and training requirements for members of a sheriff's posse or police auxiliary temporarily engaged in the performance of their duties while under the direction of the sheriff or police department. That exception, previously appearing as MCL 28.609(1)(d)(iv), was eliminated by 1998 PA 237.

When evaluating the meaning of MCL 750.81d(7)(b)(i), with its "including, but not limited to" language followed by two examples of officers who have been granted specific law enforcement authority by statute, the Court may also derive useful guidance from the rule of *ejusdem generis,* which teaches that the scope of a broad general term following a list of specific items is limited to include only "things of the same kind, class, character, or nature as those specifically enumerated." *Weakland v Toledo Engineering Co, Inc.*, 467 Mich 344, 349; 656 NW2d 175 (2003). The rationale for this rule, as this Court explained in *Weakland,* is that, "because the listed items have a commonality, the general term is taken as sharing it." *Id.* at 350. Although the rule of *ejusdem generis* is not directly applicable to this provision

[3] The former subsection 28.609(2) was subsequently renumbered as subsection 28.609(5) and amended to read as it does today by 1976 PA 422, 2004 PA 379 and 2005 PA 239.

where the list of specific examples follows the general term, it may be considered useful by analogy. *See, People v Thomas*, 263 Mich App 70, 76; 687 NW2d 598 (2004). The analogy is helpful here. MCL 750.81d(7)(b)(i) includes a "police officer" within the class of persons protected by the statute's prohibitions. The more specific examples of covered individuals that follow by way of example – motor carrier officers and MSP capitol security officers – are both classes of officers who have been granted specific law enforcement authority by statute. This being the case, it is reasonable to infer that the Legislature intended to limit the scope of "police officer" in this provision to other individuals who have been granted similar statutory authority – authority that has not been granted to reserve officers.

It is also beneficial to consider the pertinent provisions of the MCOLES Act, which can, and should, be read *in pari materia* with the provisions of MCL 750.81d. The doctrine of *in pari materia*, provides that statutes that relate to the same subject or that share a common purpose should, if possible, be read together to create a harmonious body of law. *People v Mazur*, 497 Mich 302, 313; 872 NW2d 201 (2015). It is appropriate to apply that doctrine in this case because the MCOLES Act and the Penal Code section at issue are related to the same subject. The MCOLES Act provides standards for training and certification of police officers in Michigan, and its requirements incorporating those standards determine who may, and may not, exercise the authority of a peace officer. Accordingly, the pertinent provisions of the MCOLES Act can shed useful light upon the question of which individuals can, or cannot, be considered a "police officer" within the meaning of MCL 750.81d.

Section 2(l) of the MCOLES Act, MCL 28.602(l), provides the Act's definition of "police officer" or "law enforcement officer."[4] The definition includes a list of law enforcement officers empowered to perform law enforcement activities in Michigan. The provision pertinent to this matter is subdivision 28.602(l)(i), which includes regularly employed members of a law enforcement agency authorized and established by law, including common law, who are responsible for the prevention and detection of crime and the enforcement of the general criminal laws of the state:

> "Police officer" or "law enforcement officer" means, unless the context requires otherwise, any of the following:
>
> "(i) A regularly employed member of a law enforcement agency authorized and established by law, including common law, who is responsible for the prevention and detection of crime and the enforcement of the general criminal laws of this state. Police officer or law enforcement officer does not include a person serving solely because he or she occupies any other office or position."

As previously discussed, MCL 28.609(5) specifies that a member of a police department having a full-time officer employed after January 1, 1977 is not empowered to

[4] The Prosecutor has cited this Court's decision in *People v Mazur, supra,* in support of his suggestion that the definitions in MCL 28.602 should not be read *in pari materia* with the definitions in MCL 750.81d because MCL 28.602 is prefaced by language stating that the various definitions provided therein are for the terms "[a]s used in this act." Defendant Feeley suggests that although a legislative intent to prevent consideration of a definition beyond the scope of the particular act might be appropriately inferred in some cases, it is unnecessary to infer that intent here for a number of reasons. First, the Court should recall that in *Mazur,* the Court found that it was inappropriate to read provisions of the Public Health Code and the Michigan Medical Marijuana Act *in pari materia* because the provisions in question had "two diametrically opposed purposes." 497 Mich at 313-314 Second, the limiting language of the Public Health Code at issue in *Mazur* was much more specific that the "as used in this act" appearing as the simple preface for MCL 28.602. That language limited application of the definitions in question to a small handful of sections of the voluminous Public Health Code. Finally, the Legislature's use of "as used in this act" should not be considered persuasive evidence that it intended to prevent consideration of the act's definitions in construction of related statutes when such consideration would otherwise be appropriate. The Court has surely observed that definitional sections in acts of all kinds are routinely prefaced by the same or similar language intended to signify nothing more than the fact that the definitions provided therein will apply with respect to the act's other provisions.

exercise all of the authority of a peace officer,[5] and cannot be employed in a position for which the authority of a peace officer is conferred by statute, unless that person has received certification under MCL 28.609a(1) – the certification by MCOLES that the person has met the law enforcement officer minimum standards at the time of his or her employment as a law enforcement officer:

> "(5) Except as otherwise provided in this section, a regularly employed person employed on or after January 1, 1977 as a member of a police force having a full-time officer is not empowered to exercise all the authority of a peace officer in this state, or be employed in a position for which the authority of a peace officer is conferred by statute, unless the person has received certification under section 9a(1)."

The significance of this limitation is especially evident in this case. The authority of a peace officer to make a warrantless arrest for a misdemeanor offense is of particular importance here, where the charge of resisting or obstructing at issue was based upon alleged resistance of the reserve officer's effort to effect a warrantless arrest. That authority, which is not enjoyed by ordinary citizens,[6] is conferred by MCL § 764.15, which provides, in relevant part:

> (1) A peace officer, without a warrant, may arrest a person in any of the following situations:

[5] In *Michigan State Employees Ass'n v Attorney General*, 197 Mich App 528, 531; 496 NW2d 370 (1992), the Court of Appeals held that MSP motor carrier officers did not qualify as "peace officers" exempt from the concealed weapon licensing requirements, and were not eligible for certification as police officers eligible to exercise the full authority of a peace officer under MCL 28.609(2), the predecessor of the current § 28.609(5), by virtue of the limited law enforcement authority granted to them by MCL 28.6d. In so ruling, the Court stated that, "[w]e disagree with plaintiffs' theory that the statute is satisfied if the officers are granted *some* of the authority of a peace officer." 197 Mich App at 532 (emphasis in opinion)

[6] MCL 764.16 provides limited authority for ordinary citizens to make a warrantless arrest for felony offenses, but provides no authority to arrest for misdemeanors, except with respect to arrests for second or third degree retail fraud by merchants or store security personnel.

> (a) A felony, misdemeanor, or ordinance violation is committed in the peace officer's presence.
>
> * * *
>
> (d) The peace officer has reasonable cause to believe a misdemeanor punishable by imprisonment for more than 92 days or a felony has been committed and reasonable cause to believe the person committed it."

MCL 764.15a and 764.15b confer additional authority upon a "peace officer" to effect a warrantless arrest in cases involving domestic violence and violation of personal protection orders. Numerous other provisions of the Code of Criminal Procedure prescribe the authority and duties of a "peace officer" with respect to the many events and circumstances addressed therein.

If a reserve officer is not empowered to exercise the authority of a "peace officer," he does not have the authority granted by these statutory provisions to make warrantless arrests. This, presumably, is why the reserve officer involved with this matter performed his duties while accompanied by a duly-certified police officer.

This reality provides strong support for the Court of Appeals' holding that a reserve officer is not a "police officer" for purposes of MCL 750.81d. The same reasons lead to the conclusion that the Prosecutor's reliance upon dictionary definitions defining "police officer" as a "peace officer" having authority to make arrests is misplaced. A reserve police officer does not have any inherent authority to make a warrantless arrest for a misdemeanor offense; he has, at most, partial law enforcement authority, and therefore lacks the measure of authority required for "enforcement of the general criminal laws of this state." In the absence of MCOLES certification, a reserve officer cannot qualify as a "police officer" under the MCOLES Act. The same conclusion should be reached with respect to the meaning of "police officer" as used in MCL 750.81d(7)(b)(i).

When these other relevant statutory provisions are read *in pari materia* with the statute at issue here, it is not safe or reasonable to simply assume and declare that the statutory reference to a "police officer" in § 750.81d(7)(b)(i) was intended to include reserve officers or other personnel who have not been duly certified as police officers fully authorized to do all that is required to enforce the general criminal laws of the state.

C. IF THE LANGUAGE OF MCL 750.81d IS FOUND TO BE AMBIGUOUS AND THE COURT IS UNABLE TO DETERMINE ITS MEANING BY APPLICATION OF OTHER RULES OF CONSTRUCTION, THE RULE OF LENITY SHOULD REQUIRE THAT THE AMBIGUITY BE RESOLVED IN FAVOR OF THE DEFENDANT.

In this case, the Court is being asked to determine and declare the meaning of a penal statute, a violation of which carries the threat of a potential loss of liberty, and this circumstance raises an additional consideration of great importance. Numerous decisions of this Court have held that penal statutes are to be strictly construed, and thus, any ambiguity is to be resolved in favor of lenity in cases where a firm indication of legislative intent cannot be determined. *See, e.g., People v Gilbert*, 414 Mich 191, 211; 324 NW2d 834 (1982)("[b]ecause courts are wary of creating crimes, penal statutes are to be strictly construed and any ambiguity is to be resolved in favor of lenity."); *People v Smith*, 423 Mich 427, 446; 378 NW2d 384 (1985)(The rule of lenity applies when there is an "absence of a firm indication of legislative intent."); *People v Wakeford*, 418 Mich 95, 113-114; 341 NW2d 68 (1985) (Same); *People v Hall*, 391 Mich 175, 189; 215 NW2d 166 (1974) ("We begin our review of these statutes by affirming our previous holdings that penal statutes are to be strictly construed.") *See also, United States v Bass*, 404 US 336, 347; 92 S Ct 515; 30 L Ed 2d 488 (1971)("ambiguity in the ambit of criminal statutes should be resolved in favor of lenity.")

In light of these well-established principles, long cited and applied in Michigan and elsewhere as the "rule of lenity," this Court should conclude that reserve officers do not fall within the scope of MCL 750.81d if the Court finds the statute ambiguous and is unable to find a firm indication of legislative intent to include them by application of the customary rules of statutory construction.

MCL 750.2 presents a peculiar anomaly by its instruction that, "[t]he rule that a penal statute is to be strictly construed shall not apply to this act or any of the provisions thereof" but goes on to provide that, "[a]ll provisions of this act shall be construed according to the fair import of their terms so as to promote justice and to effect the objects of the law."

The decisions have noted the tension between the time-honored rule of lenity and the first sentence of MCL 750.2 without attempting to reconcile the inconsistency. *People v Lee*, 447 Mich 552, 557 fn 4; 526 NW2d 882 (1994); *People v Poole*, 218 Mich App 702, 713-714; 555 NW2d 485 (1996). But in spite of that tension, Michigan's appellate decisions have frequently applied the rule of lenity in cases involving construction of Penal Code Provisions. This has been particularly true in cases where the question has involved determination of the intended scope of the statute in question. *See, e.g.*, *People v Gilbert*, *supra*; *People v Sawyer*, 410 Mich 531, 536; 302 NW2d 534 (1981); *People v Johnson*, 195 Mich App 571, 575-576; *People v Crousore*, 159 Mich App 304, 310; 406 NW2d 280 (1987); *People v Jones*, 142 Mich App 819, 822-823; 371 NW2d 459 (1985).

The continued application of the rule of lenity in cases interpreting the scope of Penal Code provisions has probably been attributable to the notions that it is the Legislature's responsibility to determine the scope of penal statutes, that citizens are entitled to fair notice of what is considered criminal, and that criminal liability should not be imposed based upon

statutory language of doubtful meaning. These sentiments were eloquently expressed by the Court of Appeals in *People v Jones, supra,* as follows:

> "In *People v Willie Johnson,* 75 Mich App 221, 224-225; 255 NW2d 207 (1977), *aff'd* 406 Mich 320; 279 NW2d 534 (1979), the Court of Appeals summarized the applicable rules of statutory construction to be used in construing a penal statute. The Court stated that criminal statutes must be strictly construed, and that the rule is most often employed in determining what actions come within the scope of a statutory prohibition. *Johnson,* 75 Mich App pp. 224–225, 255 NW2d 207. The principle requires that doubtful conduct be found not criminal, and in large part the principle is based upon the idea of notice. *Johnson,* p 225, 255 NW2d 207. However, this rule of strict construction of penal or criminal statutes also reflects the idea that it is the job of the Legislature to define criminal offenses. *Johnson,* p 225, 255 NW2d 207. Restraint by the courts in interpreting criminal statutes works to avoid judicial infringement of that legislative function. *Id.* Strict construction also serves to guard against the dangers of arbitrary and discriminatory application of otherwise vague legislative pronouncements. *Id.*
>
> "In interpreting penal statutes, courts will require clarity and explicitness in the defining of the crime and the classification of acts which may constitute it. *People v Reese,* 363 Mich 329, 335, 109 NW2d 868 (1961). The reasoning behind this rule is that a penal statute should be so clear that any ordinary person can tell what he may or may not do thereunder. *Id.*
>
> "It is a fundamental rule of construction of criminal statutes that they cannot be extended to cases not included within the clear and obvious import of their language. *People v Ellis,* 204 Mich 157, 161, 169 NW 930 (1918). If there is doubt as to whether the act charged is embraced in the prohibition, that doubt is to be resolved in favor of the defendant. *Id."*142 Mich App 819

These concerns apply with equal force here. Thus, if the Court should find the pertinent language of MCL 750.81d ambiguous and cannot find clear evidence of legislative intent to include reserve officers within the scope of its protections by application of the customary rules of construction, the uncertainty about whether criminal liability should attach to the conduct alleged should be resolved in Defendant Feeley's favor.

D. THE POLICY DETERMINATION AS TO WHETHER RESERVE POLICE OFFICERS SHOULD BE INCLUDED WITHIN THE CLASS OF PERSONS PROTECTED BY MCL § 750.81d IS A QUESTION FOR THE LEGISLATURE.

Defendant Feeley does not disagree with the Prosecutor's suggestion that there may be valid policy reasons for including reserve officers within the class of "persons" to whom § 750.81d should apply, but the decision to include them should be made by the Legislature by the enactment of appropriate amendatory legislation if those reasons are found to be persuasive by that body. Because the current statutory language does not provide any clear support for a finding that it may be so applied, the Court of Appeals has properly suggested that the Prosecutor's policy concerns should be addressed to the Legislature.

It bears highlighting that "[t]here is a distinction between legislative and judicial acts. The Legislature makes the law; courts apply it. To enact laws is an exercise of legislative power; to interpret them is an exercise of judicial power. To declare what the law shall be is legislative; to declare what it is or has been is judicial. The legislative power prescribes rules of action. The judicial power determines whether, in a particular case, such rules of action have been transgressed. ***The Legislature prescribes rules for the future. The judiciary ascertains existing rights."*** *In re Manufacturer's Freight Forwarding Co.,* 294 Mich 57, 63; 292 NW 678 (1940), *quoting In re Consolidated Freight Co.,* 265 Mich 340, 343; 251 NW 431 (1933)(Potter, J., dissenting).

The Court should be aware that two Bills addressing the issues presented in this matter are currently pending before the Michigan Legislature. Senate Bill 668,[7] introduced by Livingston County State Senator Joe Hune on December 10, 2015, less than two months after the Michigan Court of Appeals decision in this matter, proposes to amend MCL § 750.81d(7)(b)(i) to add reserve police officers to the definition of "persons" within the scope of the statute. As amended, the statute would read as follows:

> (b) "Person" means any of the following:
>
> (i) A police officer of this state or of a political subdivision of this state including, but not limited to, **A RESERVE POLICE OFFICER**, a motor carrier officer, or capitol security officer of the department of state police.

Senate Bill 668 would also add a new definition of "Reserve Police Officer" to facilitate this new expansion of the statute's scope:

> (C) "RESERVE POLICE OFFICER" MEANS AN INDIVIDUAL AUTHORIZED ON A VOLUNTARY OR IRREGULAR BASIS BY AN AUTHORIZED POLICE AGENCY OF THIS STATE OR POLITICAL SUBDIVISION OF THIS STATE TO ACT AS A LAW ENFORCEMENT OFFICER, WHO IS RESPONSIBLE FOR THE PRESERVATION OF THE PEACE, THE PREVENTION AND DETECTION OF CRIME, AND THE ENFORCEMENT OF THE GENERAL CRIMINAL LAWS OF THIS STATE.

The prompt introduction of Senate Bill 668 by the Senator from Livingston County strongly suggests that it was probably introduced at the behest of the Livingston County Prosecutor with the hope that its enactment would legislatively overrule the Court of Appeals decision in this matter. This, in turn, also suggests the Prosecutor's correct understanding that amendment of this statute to achieve the desired change is more appropriately a matter for the Legislature's consideration.

[7] A copy of Senate Bill 668 is submitted herewith as Appendix "A."

The other Bill relevant to the issues presented here is Senate Bill 92, which proposes numerous amendments to the MCOLES Act.[8] The changes proposed in that Bill would amend MCL 28.602 to eliminate the existing definition off "police officer" or "law enforcement officer" and replace it with a new definition of "Law enforcement officer" which would specifically exclude reserve officers:[9]

> (ii) "LAW ENFORCEMENT OFFICER" DOES NOT INCLUDE ANY OF THE FOLLOWING:
>
> * * *
>
> (P) A RESERVE OFFICER MEANING AN INDIVIDUAL WHO IS NOT SUBJECT TO THE LAW ENFORCEMENT OFFICER LICENSING PROVISIONS OF THIS ACT WHO IS APPOINTED OR EMPLOYED BY A CITY, VILLAGE, OR TOWNSHIP TO PERFORM LAW ENFORCEMENT FUNCTIONS.

A comparison of these very different proposals will demonstrate that there are conflicting views as to whether reserve police officers should be considered police officers. Those policy concerns should be weighed and decided by the Legislature. The Court of Appeals has appropriately recommended that these questions should be addressed by that body instead of the courts. Its decision is well supported. The Prosecutor's application for leave to appeal should therefore be denied.

[8] The pertinent portions of Senate Bill 92, as passed by the Senate on October 7, 2015, are submitted herewith as Appendix "B."

[9] The relevant language cited here may be found on pages 10 and 12 of Appendix "B."

RELIEF

WHEREFORE, Defendant – Appellee Ryan Scott Feeley respectfully requests that the People's application for leave to appeal be denied.

Respectfully submitted,

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